

4

CASSANDRA J. RICHEY
State Bar No. 155721
BARRETT DAFFIN FRAPPIER
TREDER & WEISS, LLP
3990 E. CONCOURS STREET, SUITE 350
ONTARIO, CA 91764
(626) 371-7000 – Phone
(972) 661-7726 - Fax
edcaecf@bdfgroup.com
File No. 00000008801169

Attorney for Movant
NATIONSTAR MORTGAGE LLC
D/B/A MR. COOPER

UNITED STATES BANKRUPTCY COURT

EASTERN DISTRICT OF CALIFORNIA-FRESNO DIVISION

In re:
ANDREA EYRE

Debtor.

CASE NO.: 20-10013-A-7

CHAPTER: 7

DC NO.: EAT-1

MOTION FOR RELIEF FROM THE
AUTOMATIC STAY

[*Local Rule 4001-1 and Local Rule 9014-1(f)(1)*]

DATE: March 05, 2020

TIME: 9:45 am

PLACE: U.S. Bankruptcy Court
510 19th Street
Bakersfield, CA 93301

NATIONSTAR MORTGAGE LLC D/B/A MR. COOPER hereby moves the court for an
Order Terminating Automatic Stay for cause pursuant to (i) *11 U.S.C. Section 362(d)(1)* and (ii)
11 U.S.C. Section 362(d)(2) on the grounds hereafter set forth:

1 1. On January 03, 2020, the Debtor ANDREA EYRE commenced this voluntary
2 Chapter 13 case in the United States Bankruptcy Court for the Eastern District of California,
3 Fresno Division, Case No. 20-10013-A-7. JEFFREY M. VETTER is the duly appointed, qualified
4 and acting Chapter 7 Trustee.

5 2. The court has subject matter jurisdiction over this Motion for Relief from the
6 Automatic Stay under the provisions of 28 *U.S.C. Section 157(b)* and 11 *U.S.C. Section 362*. Venue
7 in this court is proper under the provisions of 28 *U.S.C. Sections 1408* and *1409*.

8 3. The Debtor's estate includes real property commonly known as **1232 S. MCCALL**
9 **ST, RIDGECREST, CA 93555** and legally described in the attached Deed of Trust.

10 4. Movant is the current holder of a Note in the original sum of \$152,623.00 executed
11 on or about October 07, 2017 by the Debtors ANDREA EYRE in favor of LOANDEPOT.COM,
12 LLC. Movant directly or through an agent has possession of the promissory note which has been
13 duly endorsed. The Note is secured by a first priority Deed of Trust against said real property
14 recorded on October 19, 2017 as Instrument No. 217142016 in the Office of the County Recorder of
15 KERN County, California. The Deed and Trust was assigned to Movant.

17 5. The original loan amount was payable with interest at the initial rate of 3.875% per
18 annum in monthly principal and interest installments of \$717.69 each, commencing December 01,
19 2017 and continuing thereafter each calendar month through November 01, 2047 at which time the
20 entire unpaid principal balance plus accrued interest shall be due and payable. The current
21 monthly payment is \$1,028.88

23 6. The loan is in default for the months of July 01, 2018 through and including January
24 01, 2020. Delinquent monthly installments total \$19,410.77. The Note and Deed of Trust also
25 obligate the borrower to pay reasonable attorney fees and costs incurred by the beneficiary to protect
26 its interests. Movant has incurred attorney fees and costs totaling \$931.00 in the relief from stay
27 proceeding.
28

1 7. Movant has commenced foreclosure proceedings on November 14, 2018 and there is
2 currently a foreclosure sale date scheduled for February 03, 2020. If title reverts to Movant, the
3 real property will have to be marketed and sold to recover the beneficiary's investment. To do so,
4 the real property would be listed for sale with a real estate broker with a commission payable upon
5 close of escrow in a sum equal to 8% of the selling price. The total estimated costs of sale are
6 \$14,320.00

7 8. The Debtor claim under penalty of perjury in Schedule A – Real Property and in
8 Schedule D – Creditors Holding Secured Claims that the real property has a fair market value of
9 \$179,000.00. After deducting the estimated costs of sale and the total encumbrances from the
10 Debtor's value of the real property, the remaining equity cushion does not adequately protect
11 Movant's interest in the real property and there is no remaining equity for the Debtor.

12 9. Furthermore, the real property has no substantial value for the debtor estate.
13 According to Schedule A, the fair market value of the real property is \$179,000.00. The real property
14 is encumbered by Movant's Deed of Trust securing a debt of \$171,656.01. Since the total
15 encumbrances against the property are estimated to be \$171,656.01, there is no equity in this asset for
16 the Chapter 7 Trustee to administer.

17
18 10. Pursuant to the Individual Debtor's Statement of Intentions, the Debtor intends to
19 surrender her right, title and interest in the real property, a copy of which is attached to the Exhibit
20 Document filed herewith and incorporated herein by this reference.

21 11. Since the equity in the real property does not adequately protect Movant's interest in
22 the real property, there is cause to terminate the automatic stay under *11 U.S.C. Section 362(d)(1)* and
23 *11 U.S.C. Section 362(d)(2)* to allow Movant, its successors and/or assignees, to enforce its state law
24 remedies to foreclose upon and to recover possession of the real property.
25
26
27
28

1 WHEREFORE, movant prays for an Order as follows:

2
3 1. For an Order Granting Relief from the Automatic Stay to allow Movant to enforce its
4 state law foreclosure remedies against the real property described above and to allow the successful
5 bidder to recover possession of said real property in accordance with applicable state laws.

6 2. That the Order Granting Relief from the Automatic Stay be binding and effective
7 notwithstanding any conversion of this case to a case under any Chapter of *Title 11* of the *United*
8 *States Code* without further notice, hearing or court order.

9 3. That the Order Granting Relief from the Automatic Stay be deemed effective and
10 enforceable immediately upon its entry with no stay on its enforcement as prescribed by *Rule*
11 *4001(a)(3)* of the *Federal Rules of Bankruptcy Procedure*.

12 4. For such other relief as the court deems proper.
13
14

15 BARRETT DAFFIN FRAPPIER TREDER
16 & WEISS, LLP

17 Dated: 01/17/2020

18 By: /s/ CASSANDRA J. RICHEY
19 CASSANDRA J. RICHEY
20 Attorney for Movant
21
22
23
24
25
26
27
28